

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:

Angela Tucker,

Respondent.

Case No. 18-06/18BEE0038

License No. 364780

**Order Regarding Proposed
Decision**

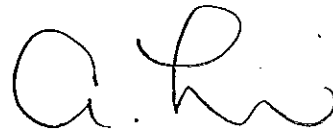
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. A hearing took place before Administrative Law Judge David Lindgren on July 18, 2018. Judge Lindgren issued a proposed decision on July 19, 2018. The proposed decision was served upon the Respondent and the Board.

At its regular meeting on August 3, 2018, the Board voted to not initiate review of the proposed decision. Neither party appealed within the time allowed by 282 Iowa Administrative Code 11.28(1).

ORDER

THEREFORE, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 20th day of August, 2018.



Dr. Ann Lebo, Executive Director
On behalf of the Board

Copies to:

Angela S. Tucker (first-class mail and restricted certified mail)
RESPONDENT

Lewis Central Community School District (first-class mail)
COMPLAINANT

Brett S. Nitzchke (electronic mail)
ATTORNEY FOR COMPLAINANT

JUL 19 2018

In the Matter of:)	DIA No. 18BEE0038
)	Case No. 18-06
ANGELA S. TUCKER,)	
)	
Respondent.)	PROPOSED DECISION

STATEMENT OF THE CASE

On January 10, 2018, Mark Schweer, Superintendent of the Lewis Central Community School District, filed a Complaint against Respondent Angela Tucker with the Iowa board of Educational Examiners (the Board). The Complaint alleged that Respondent had abandoned a written professional employment contract without prior unconditional release by the employer, in violation of 282 Iowa Administrative Code rule 25.3(5)(a)(3), and that she had failed to comply with federal, state, and local laws applicable to the fulfillment of her professional obligations, in violation of 281 Iowa Administrative Code rule 25.3(6)(m).

On July 4, 2018, the Board found probable cause to proceed to hearing and issued a Notice of Hearing and Statement of Charges. In particular, it charged that Tucker abandoned a written professional employment contract without prior unconditional release by the employer, in violation of 282 Iowa Administrative Code rule 25.3(5)(a)(3). Tucker has not Answered these charges.

A hearing was held on July 18, 2018 at the Wallace State Office Building in Des Moines, Iowa. The Complainant was represented by attorney Brett Nitzchke. Respondent Angela Tucker did not appear. Mark Schweer testified at the hearing. Complainant's Exhibits 1-5 were entered into the record.

When it was clear that Tucker was not going to appear for the hearing, the Complainant moved for a default. The undersigned reserved ruling on that motion, and received brief testimony on the requested sanction. The undersigned now concludes that the Motion for Default should be denied, and that a decision will be rendered on the contents of the file and on Dr. Schweer's testimony.

FINDINGS OF FACT

Respondent Angela Tucker holds a Master Educator license (folder # 364780). Her license is current and next expires on August 31, 2018. Tucker began employment with the Lewis Central Community School District in August of 2005 as an elementary school teacher.

Tucker signed a contract of employment with Lewis Central on June 30, 2017, that requires her to teach for 192 days. Lewis Central's Board Policy 402.5 provides that an

employee who wishes to resign before the expiration of his or her contract must make a written request at least 60 days prior to the date of departure and that if this notice is not given the district will notify the Board of Educational Examiners and seek disciplinary action.

On November 10, 2017, Tucker e-mailed Superintendent Schweer a letter resigning her position effective November 24, 2017. She reported that "I have decided to accept a position in the private sector, to challenge myself further and continue to utilize my valuable education and experience."

Upon receipt of this letter, Dr. Schweer responded, reciting the board policy that a written request to be released from a contract and at least 60 days prior notice. Tucker indicated that she was aware of the policy but that "the resignation stands, effective November 24, 2017." Schweer then made it known he would be notifying the Board of Educational Examiners. Tucker's last day was actually November 22, 2017.

During his testimony at hearing, Dr. Schweers requested a one-year revocation of Tucker's license.

CONCLUSIONS OF LAW

The legislature created the Board of Educational Examiners with exclusive authority to license practitioners and develop a code of professional rights and responsibilities, practices and ethics. The Board has promulgated a Code of Professional Conduct and Ethics at 282 Iowa Administrative Code Chapter 25. Additionally, the Board has the authority to enforce its rules through revocation or suspension of a license, or by other disciplinary action against a practitioner licensed by the Board.¹ In a case alleging the failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the board shall represent the complainant in a disciplinary hearing.²

Respondent is charged with a violation of 282 Iowa Administrative Code rule 25.3(5)(a)(3). That rule provides that it is a violation of Standard V, relating to contractual obligations, to abandon a written professional employment contract without prior unconditional release by the employer.

The preponderance of the evidence establishes that Respondent Angela Tucker violated 282 Iowa Administrative Code rule 25.3(5)(a)(3) by abandoning a written professional employment contract without prior unconditional release from Lewis Central CSD. Tucker signed a teaching contract for the 2017-18 school year on June 30, 2017. Under the terms of the contract, Tucker was required to teach for 192 school days during that school year. Tucker submitted a letter of resignation on November 10, 2017 and left her employment prior to completing the contract without obtaining an unconditional release.

¹ Iowa Code § 272.2 (2017).

² Iowa Code 272.2(4) (2017).

Where a violation is found, the Board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.³

The district requests a one-year revocation of Tucker's license. In assessing a proper sanction, the undersigned must consider whether any mitigating or aggravating factors are present in the record. First, Tucker did not appear for the hearing so it is impossible to assess whether any mitigating factors are at play here. Accordingly, the undersigned concludes there are no mitigating factors.

The only reason provided by the appellant for her resignation is that she had accepted a position in the private sector to challenge herself further. This is not an acceptable reason to break a valid contract. Moreover, the timing of the departure undoubtedly made it extremely difficult for the district to fill the position and likely required a substitute teacher for a period of time. This certainly caused a disruption to the students' educational environment.

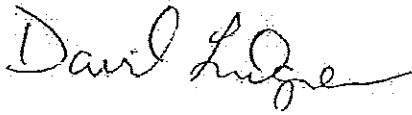
In light of this, the undersigned concludes that something more than a public reprimand is warranted. However, there do not appear to be any examples on the Board of Educational Examiner's index of decisions where a license was revoked based on the failure to fulfill a contract. Therefore, a 60-day suspension of Tucker's license is deemed appropriate.

ORDER

IT IS THEREFORE ORDERED that the license issued to Respondent Angela Tucker shall be suspended for a period of sixty days as a sanction for her violation of 282 Iowa Administrative Code 25.3(5)(a)(3). This sanction shall be effective when this Proposed Decision become a final order of the Board.

³ 282 Iowa Administrative Code (IAC) 11.33.

Dated this 19th day of July, 2018.



David Lindgren
Administrative Law Judge

cc: Angela S. Tucker (First Class Mail)
Brett S. Nitzchke, Attorney (Electronic Mail)
Ann Lebo, Board of Educational Examiners (Electronic Mail)

Motion to Vacate. Pursuant to 282 Iowa Administrative Code 11.23(3), decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or unless an appeal of the decision on the merits is timely initiated within the time provided by rule 282 IAC 11.28. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

Appeal on the Merits. Pursuant to 282 Iowa Administrative Code 11.28, any adversely affected party may appeal a proposed decision to the Board within 30 days after issuance of the proposed decision. The notice of appeal must be in writing and signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, and the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS
OF THE STATE OF IOWA**

In the matter of)	Case No. 18-06
)	Folder No. 364780
ANGELA S. TUCKER,)	
)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES

YOU ARE HEREBY NOTIFIED that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing will be held on Wednesday, July 18, 2018, before Administrative Law Judge David Lindgren, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 1:00 p.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9th Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 1:00 p.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Lewis Central Community School District.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code (IAC) chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 IAC 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any

resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 IAC 11.18.

5. Prosecution. The Complainant is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to the Complainant at the following address:

Lewis Central Community School District
4121 Harry Langdon Blvd.
Council Bluffs, Iowa 51503

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Ann Lebo, the Board's Executive Director, at (515) 281-5849.

B. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

7. Respondent is charged with abandoning a written professional employment contract without prior unconditional release by the employer, in violation of Board rule 282 IAC 25.3(5)(a)(3).

C. JURISDICTION AND LEGAL AUTHORITY

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 IAC chapter 11.

D. FACTUAL CIRCUMSTANCES

9. Respondent holds a MASTER EDUCATOR LICENSE (FOLDER # 364780) with the following endorsement: K-6 Teacher Elementary Classroom. Respondent's license is current and will expire on August 31, 2018.

10. Respondent was hired by the Lewis Central Community School District in August of 2005, as an elementary classroom teacher. She remained in her teaching

position until November 2017. On November 10, 2017, Respondent sent an email, which stated she was resigning. She did not report to work after November 22, 2017.

11. On January 10, 2018, the Board of Educational Examiners received a complaint against Respondent alleging a violation of the Code of Ethics. On May 11, 2018, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Investigation revealed that Respondent did abandon her contract as alleged in the complaint.

13. Respondent did not obtain a release from Lewis Central Community School District prior to Respondent's resignation, as required by 282 IAC 25.3(5)(b)(1), and did not provide notice to the employing board in accordance with 282 IAC 25.3(5)(b)(2).

E. SETTLEMENT

14. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 IAC 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Complainant identified in Section A, above.

Dated this 4th day of June, 2018.



Ann Lebo, Executive Director
Iowa Board of Educational Examiners

Copies to:

Angela Tucker (first-class mail and restricted certified mail)
RESPONDENT

Lewis Central Community School District (electronic mail)
4121 Harry Langdon Blvd.
Council Bluffs, Iowa 51503
COMPLAINANT

Brett Nitzchke (electronic mail)
ATTORNEY FOR COMPLAINANT